

REMARKS

Claims 13-15 and 21 stand rejected. Applicants have added new claims 22-31 herein. Thus claims 13-15, 21, and 22-31 are pending. Applicants would like to thank the examiner for the courtesy of a telephonic interview on February 27, 2008. During the interview, the claims amended in the preliminary amendment were discussed, as was the finality of the pending office action.

The pending Office Action is indicated as being Final even though it is the first Office Action in this matter, and even though the Applicants made substantive amendments to the claims in a preliminary amendment. Applicants respectfully submit that finality is not warranted in such a situation, and request withdrawal of the finality and consideration of the instant response, including the amendments herein.

In particular, Applicants had argued in the parent application that the applied prior art did not disclose the complex pricing recited in the claims because the prior art involved only a single price bid from a particular bidder (Applicant's Reply to Action of April 5, 2007, p. 5). The examiner responded by indicating that the term "complex pricing" could be read broadly enough to cover such a situation (Office Action of Jan 2, 2008, p. 4). While Applicants respectfully disagreed, they nonetheless added particular wording to the claims, in the preliminary amendment, to explicitly distinguish situations in which a bidder enters a bid that may have many complicated terms, but that has a single price term. As a result of that amendment, the basis for the latest rejection has necessarily changed from the prior rationale that the prior art discloses complex pricing under its broadest reasonable meaning which includes single price terms, to a rationale that the prior art contains the different "the complex pricing structures supplied by two or more potential bidders include bids with multiple different pricing amounts."

In such a situation, finality is not appropriate. MPEP § 706.07(h)(VIII) requires two conditions be met in order to properly finally reject a first office action: 1) the claims must be drawn to the same invention claimed in the earlier application, and 2) the claims would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. The first condition is not met here, because

Applicants substantially amended the independent claim in the Preliminary Amendment that accompanied the Request for Continued Examination, and thus the claimed invention is not the same as for the previous finally-rejected invention. Therefore, Applicants respectfully request removal of the finality of the rejection(s).

Rejections under 35 U.S.C. §102

Claims 13-15 and 21 are rejected under 35 U.S.C. §102(e) as being anticipated by Davis et al. (2006/0149653). Claim 13 is the sole independent claim of the group.

Claim 13 relates to a computer-implemented method of managing bid pricing information. The method comprises receiving transaction information and item data from a buyer, generating a bid invitation containing entries relating to the transaction information and item data, and making the bid invitation available to a plurality of potential bidders. The method further comprises receiving from one or more of the potential bidders bid responses containing a complex pricing structure and corresponding complex pricing amounts. The complex pricing structure is selected and supplied by each potential bidder, and the complex pricing structures supplied by two or more potential bidders include bids with multiple different pricing amounts. A winning bidder is selected based on the complex pricing amounts.

The claimed method thus provides a benefit in a bidding scenario in that bidders are not restricted to providing a single-priced bid (such as a straight single price or a single price subject to discounts). Rather, the bidders may provide different bids, having different terms and different prices. In this manner, a company can solicit bids in a much more flexible fashion -- it can, for example, list a general outline of terms relating to goods that it would like to purchase, and leave it to the bidders to fill in additional terms in a creative manner that best meets each bidder's capabilities. By this process, the soliciting organization can get prices that are better than if it had imposed all terms, and can also get creative terms from its bidders that it may never have envisioned. The provision of multiple bid prices from the bidders permits such variation in terms, so that bidders can match pricing to terms, and they need not feel restricted to one particular price with a corresponding single set of terms.

The Davis et al. reference does not include any such disclosure. Rather, it simply shows the submission of one pricing proposal, and submitting only one bid per bidder. In the paragraph

to which the Office Action cites, Davis discusses single bids that include discounts. Such a bid contains only a single price term (the base price set by the bidder), and not multiple prices as recited in the instant claims.

An advantage of Applicants' method is particularly apparent with regard to Davis' disclosure beginning at para [0147]: "the supplier is ... faced with entering in cost and movement for each individual item within the event at 615." There is no recitation of entering multiple pricing scenarios for each item. Further, at para. [0156], Davis states "the buyer is also empowered to negotiate with each proposal," and discusses methods for back-and-forth negotiation between buyer and seller regarding the price (singular) offered by the seller. An advantage of Applicants' method is that the buyer receives multiple pricing scenarios from a bidder or bidders. This reduces the back-and-forth negotiating, and hence may lead to a faster contract resolution, because the buyer has more options to choose from and can provide a gauge to the seller's pricing flexibility.

Invalidity for anticipation requires that there is no difference between the claimed invention and the referenced disclosure as viewed by a person of ordinary skill in the art; *Scripps Clinic and Research Foundation v. Genentech, Inc., 18 U.S.P.Q. 2d 1001 (Fed. Cir. 1991)*. Because Applicant's method allows bidding with complex pricing scenarios in the true sense of the term and Davis does not, Applicants respectfully submit that the rejection under 35 U.S.C. §102(b) should be immediately withdrawn and a Notice of Allowance issued.

New Claims

Claims 22-31 have been added to more particularly define the invention. Claims 22-27 depend either directly or indirectly on independent claim 13. Claim 28 is independent, and claims 29-31 depend on claim 28. Support for the claims may be found, for example, at pages 5-8 of the original specification.

Certain of the claims, such as claims 22, 25, and 28 more clearly delineate manners in which a single bidder submits multiple different bids, where the bids have prices and corresponding terms – e.g., if the bidder is bidding less, they are going to provide less (e.g., a lower priced item, less service, etc.). The bidders themselves may specify such terms, thus, as

described above, leaving the bid solicitor with more flexibility in seeking bids. In addition, the bidders may tailor their bids to their particular strengths, and may thus provide the buyer with greater values, service, and/or efficiency. As discussed above, the applied reference does not disclose nor even fairly suggest such features.

Certain of the claims, such as claims 23 and 29-31 recite that bid terms submitted by one bidder are made available to the other bidders, and those other bidders than submit prices for the terms. In this manner, if an owner likes the terms developed by a first bidder, that owner can circle back and see what sort of process it can receive from the other bidders. Again, the Davis reference contains no such disclosure or suggestion.

Yet other new claims, such as claims 26 and 31, recite aggregating the bids of the various bidders. Such aggregation can permit for easier comparisons of bids against each other. Also, the bid prices may be normalized so as to permit more of an apples-to-apples comparison between bids that have different prices and different terms. Again, the Davis reference neither discloses nor suggests in any way such features.

CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Please apply any other charges or credits to deposit account 06-1050.

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Page : 11 of 11

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